

Interpretation .03 to Rule 24.13 to delete the requirement that any delays in the opening rotation must be in five (5) minute intervals and to give two Floor Officials greater discretion to delay the commencement of the opening rotation. Rather than limiting the circumstances under which two Floor Officials may delay the opening, amended

Interpretation .03 would permit Floor Officials to delay the opening rotation at their discretion in the interests of a fair and orderly market. The circumstances outlined in current Interpretation .03 to Rule 24.13, under which two Floor Officials may delay the opening, would remain as factors that Floor Officials may consider in deciding whether to delay the opening rotation. CBOE believes that these amendments to Interpretation .03 are consistent with the amendment proposed for Rule 6.2, which grants two Floor Officials the authority to delay the opening rotation in any class of options in the interests of a fair and orderly market. Current Interpretation .01 to Rule 24.13 provides that the procedures for modification of a rotation and other aspects of the rotation set forth in Rule 6.2 are applicable to index options. CBOE believes that the authority regarding delays in opening contained in Rule 6.2 should therefore apply to index options, so that Floor Officials' discretion to delay the opening is not more restricted in the case of index options.

The present requirement that the delay in the opening rotation for index options may only be in five (5) minute intervals would be deleted because CBOE believes the interests of a fair and orderly market are better served if the Floor Officials may end the delay and commence the opening when it is appropriate to do so, without having to wait until the prescribed five minutes has lapsed. In addition, CBOE believes that for lengthy delays, it is impractical to require two Floor Officials to remain at the index options post for the sole purpose of declaring successive five minute delays.

Conclusion

The proposed rule changes are intended to give Order Book Officials, with the approval of two Floor Officials, the discretion to conduct a trading rotation during the day and to structure the order and manner of the rotation as they consider appropriate under the circumstances. The rule changes would further allow any two Floor Officials to delay the opening rotation if it is in the interests of a fair and orderly market to do so. CBOE believes that the proposed rule changes are consistent with and further the objectives of section 6(b)(5)

of the Act, in that the rule changes are designed to perfect the mechanism of free and open market and to protect investors and the public interest by enabling Floor Officials and Order Book Officials to evaluate and consider market conditions and circumstances in determining the appropriate order and manner of the rotation and whether to delay the opening rotation.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule changes will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Changes Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule changes.

III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule changes, or

(B) institute proceedings to determine whether the proposed rule changes should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for

inspection and copying at the principal office of CBOE. All submissions should refer to the file number SR-CBOE-95-04 and should be submitted by March 14, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²

Margaret H. McFarland,

Deputy Secretary.

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[Release No. 34-35364; File No. SR-NASD-95-8]

Self-Regulatory Organizations; Notice of Proposed Rule Change by the National Association of Securities Dealers, Inc., Relating to a Six Month Extension of the SOES Minimum Exposure Limit Rule and the SOES Automated Quotation Update Feature

February 13, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on February 10, 1995, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission in publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD proposed to extend, until October 2, 1995, the effectiveness of certain rules governing the operation of The Nasdaq Stock Market, Inc.'s ("Nasdaq") Small Order Execution System ("SOES"). Specifically, these SOES rules, which were previously approved by the Commission on a pilot basis on December 23, 1993² and recently extended through March 27, 1995,³ provide for: (1) a reduction in the minimum exposure limit for unpreferred SOES orders from five times the maximum order size to two times the maximum order size, and for the elimination of exposure limits for preferred orders ("SOES Minimum

² 17 CFR 200.30-3(a)(12)(1994).

¹ 15 U.S.C. 78s(b)(1) (1988).

² See Securities Exchange Act Release No. 33377 (Dec. 23, 1993), 58 FR 69419 (Dec. 30, 1993) ("Interim SOES Rules Approval Order").

³ See Securities Exchange Act Release No. 35275 (Jan. 25, 1995), 60 FR 6327 (Feb. 1, 1995) ("Interim SOES Rules Extension Order").

Exposure Limit Rule"); and (2) implementation of an automated function for updating market maker quotations when the market maker's exposure limit has been exhausted ("SOES Automated Quotation Update Feature"). These rules are part of a set of SOES rules approved by the SEC on a pilot basis known as the Interim SOES Rules.⁴

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On December 23, 1993, the SEC issued an order approving the Interim SOES Rules on a one-year pilot basis effective January 7, 1994. In response to two applications requesting a stay of the Interim SOES Rules Approval Order, however, the SEC granted a partial stay of the effective date of the order through January 25, 1994. Thus, absent further Commission action, the Interim SOES Rules initially were effective from January 26, 1994 through January 25, 1995.⁵ On January 25, 1995, the SEC approval an NASD proposal to extend the effectiveness of the Interim SOES Rules through March 27, 1995.⁶

⁴ As first approved by the Commission on December 23, 1993, the Interim SOES Rules had four components: (1) The SOES minimum Exposure Limit; (2) the Automated Quotation Update; (3) a reduction in the maximum size order eligible for execution through SOES from 1,000 shares to 500 shares ("SOES Maximum Order Size"); and (4) the prohibition of short sales through SOES. In light of the SEC's approval of the NASD's short sale rule in June 1994, the NASD did not seek to extend the prohibition against the entry of short sales into SOES. Absent SEC approval of an extension of the effectiveness of the SOES Maximum Order Size rule, the rule will lapse effective March 28, 1995.

⁵ Securities Exchange Act Release No. 33377 (Dec. 23, 1993), 58 FR 69419 (Dec. 30, 1993) (approving the Interim SOES Rules on a one-year pilot basis effective January 7, 1994). See also Securities Exchange Act Release No. 33424 (Jan. 5, 1994) (order denying stay and granting interim stay through January 25, 1994) and Securities Exchange Act Release No. 33635 (Feb. 17, 1994) (order denying renewed application for stay).

⁶ See SOES Interim Rules Extension Order, *supra* note 3.

As described in more detail below, because the NASD believes implementation of the SOES Minimum Exposure Limit rule and the SOES Automated Quotation Update Feature have been associated with positive developments in the markets for Nasdaq securities and clearly have not had any negative effect on market quality, the NASD believes it is appropriate and consistent with the maintenance of fair and orderly markets and the protection of investors to extend the effectiveness of these rules. In addition, consistent with the termination of the Interim SOES Rule that prohibited the entry of short sales into SOES, the NASD believes its instant proposal to continue the effectiveness of some but not all of the original components of the Interim SOES Rules is appropriate and consistent with the Act. While the NASD believes the Interim SOES Rules collectively have had a beneficial impact on the market, the NASD also believes that each of the Interim SOES Rules has individually had a benefit on the market. Thus, each one of the Interim SOES Rules can be evaluated for consistency with the Act independent of the others. The SOES Minimum Exposure Limit rule and the SOES Automated Quotation Update Feature reflect a reasoned approach by the NASD to address the adverse effects on market liquidity attributable to active intra-day trading activity through SOES, while at the same time not compromising the ability of small, retail investors to receive immediate executions through SOES. Specifically, these rules are designed to address concerns that concentrated, aggressive use of SOES by a growing number of order entry firms has resulted in increased volatility in quotations and transaction prices, wide spreads, and the loss of liquidity for individual and institutional investor orders.

The NASD believes that the same arguments and justifications made by the NASD in support of approval of the SOES Minimum Exposure Limit rule and the SOES Automated Quotation Update Feature are just as compelling today as they were when the SEC relied on them to initially approve the rules. In sum, the NASD continues to believe that concentrated bursts of SOES activity by active order-entry firms contributed to increased short-term volatility, wider spreads, and less market liquidity on Nasdaq and that the SOES Minimum Exposure Limit rule and the SOES Automated Quotation Update Feature are an effective means to minimize these adverse market impacts.

The NASD also notes that the SEC made specific findings in the Interim

SOES Rules Approval Order that the SOES Minimum Exposure Limit rule and the SOES Automated Quotation Update Feature were consistent with the Act. In particular, the SEC stated in its approval order that:

a. Because the benefits for market quality of restricting SOES usage outweigh any potential decrease in pricing efficiency, the Commission concludes that the net effect of the proposal is to remove impediments to the mechanism of a free and open market and a national market system, and to protect investors and the public interest, and that the proposed rule changes are designed to produce accurate quotations, consistent with Section 15A(b)(6) and 16A(b)(11) of the Act. In addition, the Commission concludes that the benefits of the proposal in terms of preserving market quality and preserving the operational efficiencies of SOES for the processing of small size retail orders outweigh any potential burden on competition or costs to customers or broker-dealers affected adversely by the proposal. Thus, the Commission concludes that the proposal is consistent with Section 15A(b)(9) of the Act in that it does not impose a burden on competition which is not necessary or appropriate in furtherance of the purposes of the Act.⁷

b. The Commission also concludes that the proposal advances the objectives of Section 11A of the Act. Section 11A provides that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure economically efficient execution of securities transactions, fair competition among market participants, and the practicality of brokers executing orders in the best market. The Commission concludes that the proposal furthers these objectives by preserving the operational efficiencies of SOES for the processing of small orders from retail investors.⁸

c. The Commission believes that it is appropriate to restrict trading practices through SOES that impose excessive risks and costs on market makers and jeopardize market quality, and which do not provide significant contributions to liquidity or pricing efficiency. * * * The Commission believes that it is more important to ensure that investors seeking to establish or liquidate an inventory position have ready access to a liquid Nasdaq market and SOES than to protect the ability of customers to use SOES for intra-day trading strategies.⁹

d. The Commission believes that there are increased costs associated with active intra-day trading activity through SOES that undermine Nasdaq market quality * * * Active intra-day trading activity through SOES can also contribute to instability in the market. * * * 10

e. In addition, these waves of executions can make it difficult to maintain orderly markets. Given the increased volatility

⁷ Interim SOES Rules Approval Order, *supra* note 2, 58 FR at 69423 (footnote omitted).

⁸ *Id.* (footnote omitted).

⁹ *Id.* at 69424-25.

¹⁰ *Id.* (footnote omitted).

associated with these waves of intra-day trading activity, market makers are subject to increased risks that concentrated waves of orders will cause the market to move away. As a result, individual market makers may be unwilling to narrow the current spread and commit additional capital to the market by raising the bid or lowering the offer. When market makers commit less capital and quote less competitive markets, prices can be expected to deteriorate more rapidly. Accordingly, the Commission believes that it is appropriate for the NASD to take measured steps to redress the economic incentives for frequent intra-day trading inherent in SOES to prevent SOES activity from having a negative effect on market prices and volatility.¹¹

f. The Commission does not believe that intra-day trading strategies through SOES contribute significantly to market efficiency in the sense of causing prices to reflect information more accurately.¹²

g. The Commission has evaluated each of the proposed modifications to SOES, and concludes that each of the modifications reduces the adverse effects of active trading through SOES and better enables market makers to manage risk while maintaining continuous participation in SOES. In addition, the Commission does not believe that any of the modifications will have a significant negative effect on market quality. To the extent that any of the modifications may result in a potential loss of liquidity for small investor orders, the Commission believes that these reductions are marginal and are outweighed by the benefits of preserving market maker participation in SOES and increasing the quality of executions for public and institutional orders as a result of the modifications.¹³

h. The Commission * * * has determined that the instant modifications to SOES further objectives of investor protection and fair and orderly markets, and that these goals, on balance, outweigh any marginal effects on liquidity for small retail orders, and any anti-competitive effects on order entry firms and their customers. The Commission concludes that the ability of active traders to place trades through a system designed for retail investors can impair market efficiency and jeopardize the level of market making capital devoted to Nasdaq issues. The Commission believes that the rule change is an appropriate response to active trading through SOES, and that the modifications will reduce the effects of concentrated intra-day SOES activity on the market.¹⁴

The NASD believes these significant statutory findings by the SEC regarding the SOES Minimum Exposure Limit rule and the SOES Automated Quotation Update Feature and the SEC's assessment of the likely benefits to the marketplace that would result from the rules have been confirmed and substantiated by econometric studies on the effectiveness of the Interim SOES

Rules conducted by the NASD's Economic Research Department¹⁵ and an independent economist commissioned by the NASD.¹⁶ When the SEC approved the Interim SOES Rules, it stated that "[a]ny further action the NASD seeks with respect to SOES—extension of these modifications upon expiration, or introduction of other changes—will require independent consideration under Section 19 of the Act."¹⁷ In addition, the SEC stated that, should the NASD desire to extend these SOES changes or modify SOES, the Commission would expect, "the NASD to monitor the quality of its markets and assess the effects of the approved SOES changes on market quality for Nasdaq securities." Also, if feasible, the SEC instructed the NASD to provide a quantitative and statistical assessment of the effects of the SOES changes on market quality; or, if an assessment is not feasible, the SEC stated that the NASD should provide a reasoned explanation supporting that determination.

In sum, the NASD's study found that:

- Since the SOES changes went into effect in January 1994, the statistical evidence indicated that when average daily volume, stock price, and stock price volatility are held constant through regression techniques, quoted percentage spreads in Nasdaq securities experienced a decline in the immediate period following implementation of the changes and have continued to decline since then. The statistical evidence also showed that the narrowing of quoted percentage spreads became more pronounced and robust the longer the Interim SOES Rules were in effect. In particular, quoted spreads in cents per share for the 500 largest Nasdaq National Market securities experienced a sharp decline from April 28 to May 12 and from June 23 to July 18.¹⁸

¹⁵ See letter from Gene Finn, Vice President & Chief Economist, NASD, to Katherine England, Assistant Director, National Market System & OTC Regulation, SEC, dated October 24, 1994 (letter submitted in connection with the NASD's N•PROVE filing, SR-NASD-94-13).

¹⁶ See The Association Between the Interim SOES Rules and Nasdaq Market Quality, Dean Furbush, Ph.D., Economists, Inc., Washington D.C., December 30, 1994 ("Furbush Study").

¹⁷ Interim SOES Rules Approved Order, *supra* note 2, 59 FR at 69429.

¹⁸ Some press reports have attributed the recent decline in spreads for Nasdaq stocks to the publication, on May 26 and 27, 1994, of newspaper articles in *The Wall Street Journal*, *The Los Angeles Times* and other publications reporting the results of an economic study conducted by two academicians that illustrated the lack of odd-eighth quotes for active Nasdaq stocks. Contrary to these press reports, this study shows that spreads had indeed narrowed before publication of these articles (from April 28 to May 12), stabilized at these

- With the exception of a brief, market-wide period of volatility experienced by stocks traded on Nasdaq, the New York Stock Exchange, and the American Stock Exchange during the Spring, the volatility of Nasdaq securities appears to be unchanged in the period following implementation of the changes; and
- A smaller percentage of Nasdaq stocks experienced extreme relative price volatility after implementation of the rules and that these modifications, in turn, suggest a reduction in relative volatilities since the rules were put into effect.

The Furbush Study also corroborated the findings of the NASD's study. This study found that there was a statistically significant improvement in effective spreads for the top 100 Nasdaq stocks (based on dollar volume) during the three month period following implementation of the rules. Moreover, the study also found that the most significant improvement in effective spreads for the top 100 stocks occurred for trade sizes between 501 and 1,000 shares, precisely the level that was made ineligible for SOES trading by the Interim SOES Rules. In addition, the study found that the average number of market makers for the top ten Nasdaq-listed stocks increased from 44.3 to 46.0, or 3.8 percent, and from 30.2 to 30.9 for the top 100 stocks, or 2.3 percent. Although correlation does not necessarily imply causation, as noted by the SEC when it approved the Interim SOES Rules, the NASD believes that positive market developments clearly have been associated with implementation of the Interim SOES Rules.

The NASD also believes that these studies of the effectiveness of the Interim SOES Rules lend credence to another NASD study that was submitted to the SEC in support of approval of the Interim SOES Rules.¹⁹ In the May 1993 SOES Study, the NASD found that concentrated waves of orders entered into SOES by active order-entry firms resulted in discernible degradation to the quality of the Nasdaq market. Specifically, the study found, among other things, that: (1) bursts of orders entered into SOES by active order entry firms frequently result in a decline in the bid price and a widening of the bid-ask spread; (2) there is a significant

narrower levels from mid-May until June 23, and declined again from June 23 to July 18.

¹⁹ See NASD Department of Economic Research: Impact of SOES Active Trading Firms on Nasdaq Market Quality (May 12, 1993) ("May 1993 SOES Study"). See also Securities Exchange Act Release No. 32313 (May 17, 1993), 58 FR 29647 (publication of the study for comment).

¹¹ *Id.* at 69424-26 (footnote omitted).

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.* at 69429.

positive relationship between increases in spreads and volume attributable to active order-entry firms as it related to total SOES volume per security; and (3) activity by active order-entry firms resulted in higher price volatility and less liquidity—higher price changes are associated with high active trading firm volume, even after controlling for normal price fluctuations.

Therefore, in light of all the above-cited statutory findings made by the SEC when it approved the SOES Minimum Exposure Limit rule and the SOES Automated Quotation Update Feature, coupled with the NASD's findings that these rules, as well as the rest of the Interim SOES Rules, have been associated with positive market developments in terms of lower spreads on Nasdaq and less stocks with extreme relative price volatility, the NASD believes it would be consistent with the Act for the Commission to extend the effectiveness of the SOES Minimum Exposure Limit rule and the SOES Automated Quotation Update Feature for a six-month period. In sum, the NASD believes its study and the Furbush Study affirm the validity and correctness of the SEC's prior statutory findings made in connection with the approval of these rules. Moreover, even if the Commission is unwilling to find positive significance in the NASD's statistical analyses, at the very least, these studies indicate that the market has not been harmed by implementation of these rules.

In addition, even if the Commission concludes that the Interim SOES Rules have had no impact on market quality, the NASD believes the Commission's approval of New York Stock Exchange ("NYSE") Rule 80A on a permanent basis illustrates that the Commission would still have a sufficient basis to approve an extension on the SOES Minimum Exposure Limit rule and the SOES Automated Quotation Update Feature for a six month period.²⁰ When NYSE Rule 80A was proposed, the Commission received considerable adverse comment to the effect that there was no causal relationship between index arbitrage and market volatility and that activation of the rule during turbulent market conditions could have disastrous effects on related options and futures markets and actually exacerbate market volatility. Despite these comments, the commission approved the proposal on a one-year pilot basis noting that "the NYSE proposal

represents a modest step, proposed on a pilot basis, to attempt to address the issue of market volatility."²¹ After the one year pilot, the NYSE prepared a report that, in the SEC's words, found that the standard measures of NYSE market quality appear largely unaffected by Rule 80A. Specifically, the NYSE Report indicated that: (1) quotes on the NYSE did not widen after the 50 Dow Jones Industrial Average point trigger was reached; and (2) the imposition of Rule 80A did not have any negative effect on price continuity and depth in the market.²² In addition, in approving Rule 80A on a permanent basis, the SEC noted that the rule "represents a modest but useful step by the NYSE to attempt to address the issue of market volatility."²³ that the rule "has not been disruptive to the marketplace,"²⁴ and that there was a "lack of evidence of any harmful effects of Rule 80A."²⁵ In sum, the SEC discussion of the statutory basis for approval of NYSE Rule 80A focused in large part on the fact that Rule 80A did not have any adverse impacts on market quality on the NYSE and that, as a result, the NYSE should be given the latitude to take reasonable steps to address excessive volatility in its marketplace. Accordingly, the NASD believes the SEC should afford the NASD the same regulatory flexibility that it afforded the NYSE to implement rules reasonably designed to enhance the quality of Nasdaq and minimize the effects of potentially disruptive trading practices.

The NASD believes that the proposed rule change is consistent with Sections 15A(b)(6), 15A(b)(9), 15A(b)(11) and 11A(a)(1)(C) of the Act. Among other things, Section 15A(b)(6) requires that the rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and in general to protect investors and the public interest. Specifically, the NYSE is proposing to

extend the effectiveness of the SOES Minimum Exposure Limit rule and the SOES Automated Quotation Update Feature for six months because of concerns that concentrated, aggressive use of SOES by a growing number of order entry firms has resulted in increased volatility in quotations and transactions prices, wider spreads, and the loss of liquidity for individual and institutional investor orders, all to the detriment of public investors and the public interest. The NYSE believes the SOES Minimum Exposure Limit rule and the SOES Automated Quotation Update Feature have operated to rectify this situation while continuing to provide an effective opportunity for the prompt, reliable execution of small orders received from the investing public. Accordingly, in order to protect investors and the public interest, the NASD believes the Interim SOES Rules should be extended through October 2, 1995, so that small investors' orders will continue to receive the fair and efficient executions that SOES was designed to provide.

Section 15A(b)(9) provides that the rules of the Association may not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The SOES Minimum Exposure Limit rule and the SOES Automated Quotation Update Feature apply across the board and do not target any particular user or participant, as all dealers may set their exposure limits at two times the tier size and all dealers may elect to utilize the automated quote feature. Accordingly, the NASD believes that these rules changes are not anti-competitive, as they are uniform in application and they seek to preserve the ability of SOES to provide fair and efficient automated executions for small investor orders, while preserving market maker participation in SOES and market liquidity.

Section 15A(b)(11) empowers the NASD to adopt rules governing the form and content of quotations relating to securities in the Nasdaq market. Such rules must be designed to produce fair and informative quotations, prevent fictitious and misleading quotations, and promote orderly procedures for collecting and distributing quotations. The NASD is seeking to continue the effectiveness of the SOES Minimum Exposure Limit rule and the SOES Automated Quotation Update Feature so that SOES activity may not result in misleading quotations in the Nasdaq market. Market makers place quotes in the Nasdaq system and these quotes comprise the inside market and define the execution parameters of SOES.

²¹ See Securities Exchange Act Release No. 28282 (July 30, 1990), 55 FR 31468, 31472 (Order approving File Nos. SR-NYSE-90-5 and 90-11).

²² See Securities Exchange Act Release No. 29854 (Oct. 24, 1991), 56 FR 55963 (Oct. 30, 1991) (order approving file SR-NYSE-91-21) ("Rule 80A Approval Order").

²³ Id. 56 FR at 55967.

²⁴ Id.

²⁵ Id. 56 FR at 55967-68.

²⁰ Rule 80A provides that when the Dow Jones Industrial Average declines or advances by 50 points or more, all index arbitrage orders to sell or buy must be executed in a market stabilizing manner.

When volatility in the SOES environment causes market makers to widen spreads or to change quotes in anticipation of waves of SOES orders, quotes in the Nasdaq market become more volatile and may be misleading to the investing public. Accordingly, absent continuation of the SOES Minimum Exposure Limit rule and the SOES Automated Quotation Update Feature, the quotations published by Nasdaq may not reflect the true market in a security and, as a result, there may be short-term volatility and loss of liquidity in Nasdaq securities, to the detriment of the investing public. Further, the continuation of the automated refresh feature will ensure that a market maker's quotation is updated after an exposure limit is exhausted. Uninterrupted use of this function will maintain continuous quotations in Nasdaq as market makers exhausting their exposure limits in SOES will not be subject to a "closed quote" condition or an unexcused withdrawal from the market.

Finally, the NASD believes that the proposed rule change is consistent with significant national market system objectives contained in Section 11A(a)(1)(C) of the Act. This provision states it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure, among other things, (i) economically efficient execution of securities transactions; (ii) fair competition among brokers and dealers; and (iii) the practicality of brokers executing investor orders in the best market. Specifically, the SOES Minimum Exposure Limit rule and the SOES Automated Quotation Update Feature advance each of these objectives by preserving the operational efficiencies of SOES for the processing of small investors' orders, by maintaining current levels of market maker participation through reduced financial exposure from unpreferred orders, and by reducing price volatility and the widening of market makers' spreads in response to the practices of order entry firms active in SOES.

In addition, for the same reasons provided by the SEC when it approved the Interim SOES Rules that are cited above in the text accompanying footnotes 7 through 14, the NASD believes that the proposed rule change is consistent with Sections 15A(b)(6), 15A(b)(9), 15A(b)(11) and 11A(a)(1)(C) of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the proposed rule change will not result in any

burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

A. by order approve such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection for copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File Number SR-NASD-95-8 and should be submitted by March 14, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. MacFarland,

Deputy Secretary.

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[Release No. 34-35370; File No. SR-NASD-94-05]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Time Period for the Exchange of Documents Before an Arbitration Hearing

February 14, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on February 1, 1995, the National Association of Securities Dealers, Inc. ("NASD") or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing to amend Section 32(c) of the NASD Code of Arbitration Procedure ("Code").¹ Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

Code of Arbitration Procedure

* * * * *

General Provisions Governing Per-Hearing Proceedings

Sec. 32.

* * * * *

(c) Pre-Hearing Exchange. At least [ten (10)] *Twenty (20)* calendar days prior to the first scheduled hearing date, all parties shall serve on each other copies of documents in their possession they intend to present at the hearing and shall identify witnesses they intend to present at the hearing. The arbitrators may exclude from the arbitration any documents not exchanged or witnesses not identified. This paragraph does not require service of copies of documents or identification of witnesses which parties may use for cross-examination or rebuttal.

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II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning

¹ NASD Manual, Code of Arbitration Procedure, Part III, Sec. 32(c) (CCH) ¶ 3732.